United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

612

BRIEF FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

RALPH WALKER, Appellant	)	
	)	
vs.	)	No. 22,870
	)	
UNITED STATES OF AMERICA	)	
	)	

APPEAL IN FORMA PAUPERIS FROM JUDGMENT
OF CONVICTION BY THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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REFERENCES TO RULINGS - None

Table of Cases

STATEMENT OF QUESTIONS PRESENTED

1. Where the defendant pleads guilty to Assault With Intent to Commit Robbery and Assault with a Dangerous Weapon, should the court deny his request to withdraw the plea of guilty made two (2) weeks later and prior to sentencing.

2. Should the court deny the defendant a trial by jury based on the fact that it would be an undue burden on the Government to bring back all of the witnesses when the witnesses are local residents.

3. In a situation where the accused may be subject to deprivation of his liberty for as long as ten (10) years, should the court deny a withdrawal of a guilty plea and deprive the accused of a jury trial.

This case has not been before this Court for review before.

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BRIEF FOR APPELLANT

Jurisdictional Statement

Appellant was brought before the District Court for the District of Columbia on January 30, 1969, pursuant to a Grand Jury indictment No. 339-68 filed in open court on June 26, 1968 charging appellant with violation of Sections 501 & 502 of Title 22 of the District of Columbia Code (Assault with Intent to Commit Robery; Assault with a Dangerous Weapon). The situs of the alleged crimes was in the District of Columbia. Appellant pleaded guilty after a pretrial hearing on the day of trial to counts one and four of the indictment. On February 14, 1969

defendant filed a motion to withdraw the plea of guilty. The trial judge denied the motion and on March 14, 1969 sentenced Appellant to forty (40) months to ten (10) years on counts one and four of the above referenced indictment. Appellant filed notice of appeal in time and applied for leave to proceed upon appeal in forma pauperis. By order issued February 24, 1969 the District Court ordered that the Appellant be authorized to proceed on appeal without prepayment of costs and with appointed counsel, and directed preparation of the transcript at government expense.

By order issued June 5, 1969, this court appointed the undersigned to represent the individual Appellant in this case.

Statement of Case

The Government charged the appellant with three (3) counts of Assault to Commit Robbery and five (5) counts of Assault with a Dangerous Weapon, which the government alleges took place on February 20, 1968. The appellant filed a plea of not guilty and was brought to stand trial on these charges on January 30, 1969.

On the date the case was set for trial, January 30, 1969, counsel for the Appellant requested a pretrial

hearing on the question of whether a pretrial identification at a preliminary hearing was violative of the Appellant's rights. The court granted the hearing and six (6) witnesses for the prosecution were called to testify. The court found as a fact that there was proper identification of the Appellant by several of the witnesses. After this ruling the case was called and a jury of twelve (12) and two (2) alternates were selected and sworn. The court proceeded to take a ten (10) minute recess after which time the Appellant entered a plea of guilty to one count of Assault with Intent to Commit Robbery and one count of Assault with a Dangerous Weapon.

On February 14, 1969 the Appellant filed a motion to withdraw his plea of guilty, which was denied.

Statutes Involved

18 USC §3772:

> "The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, in the United States courts of appeals, and in the Supreme Court of the United States. This

> "section shall not give the Supreme Court power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within ten days after entry of such plea, and before sentence is imposed."

Fed. Rules Crim. Proc., Rules 32(d) 18, USCA provides:

> "Withdrawal of the Plea of Guilty. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."

Statement of Points

1. The Government has not shown an undue burden or prejudice to this case by the withdrawal of Appellant's plea.

With respect to Point 1, Appellant desires the Court to read the following pages of the reporter's transcript: TR 108-116.

2. The Government has shown no prejudice due to reliance on Appellant's plea of guilty.

With respect to Point 2, Appellant desires the Court to read the following pages of the reporter's transcript: TR 108-116.

3. The Government has failed to show any difficulty in having prosecution witnesses available for trial.

With respect to Point 3, Appellant desires the Court to read the following pages of the reporter's transcript which indicates all witnesses are local residents: TR. 12, 34, 46, 59, 71 and 90.

4. The Appellant was under strain and emotionally upset at the time he entered his plea of guilty.

With respect to Point 4, Appellant desires the Court to read the following pages of the reporter's transcript: TR. 112, 113.

Argument

Upon completion of a Pre-trial hearing regarding an identification issue, the appellant herein withdrew his plea of not guilty and entered a plea of guilty. This was on January 30, 1969. On February 14th the Court heard and denied appellant's motion to withdraw his plea of guilty. We submit that the denial of this motion was in error and should be reversed.

Article III, Section 2, Clause 3 of the United States Constitution gives to all citizens the right of trial by jury for all crimes except cases of impeachment. The Supreme Court was granted the power in 18 USC §3772 to prescribe rules of practice and procedure in regard to pleas of guilty. This section, however, expressly limits

the effect of any rules to restrict the withdrawal of a guilty plea before sentence. Under its power the Supreme Court promulgated Rule 32(d) of the Federal Rules of Criminal Procedure which reads as follows:

> "Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."

There is a long line of decisions dealing with this rule and without exception the interpretation has been to be lenient in the granting of withdrawal of pleas of guilty. This is only in keeping with our basic concepts of trial by jury.

The Supreme Court in the case of Kercheval v. United States (1927) 274 U.S. 220 at page 224 stated:

> "The Court in exercise of its discretion will permit an accused to substitute a plea of not guilty and have a trial if for any reason the granting of the privilege seems fair and just."

This thinking was strongly affirmed again in 1964 in Nagelberg v. United States 377 U.S. 266. In this case some eight (8) months elapsed between the plea of guilty and motion to withdraw.

The line of thinking in these cases has been followed in this jurisdiction and four (4) noteworthy cases clearly depict the proper interpretation of Fed. Crim. Rule 32(d).

In the case of Poole v. United States (1957) 102 U.S. App. D.C. 71 at page 75, in reversing the District Court's ruling the Court of Appeals stated:

> "Leave to withdraw a guilty plea prior to sentencing should be freely allowed."

In the case of Gearhart v. United States (1959) 106 U.S. App.D.C. 270, the Court of Appeals again reversed the District Court in a unanimous opinion holding that a motion to withdraw before sentence is imposed is to be readily granted. The court quoted its earlier decision in Poole v. United States and the Supreme Court's decision in Kercheval v. United States indicating a very lenient standard of interpreting rule 32(d) when the motion to withdraw is made prior to sentencing. The Court went on further to state:

> 'This is not to say that the District Court lacks all discretion in dealing with a motion of the present sort. But discretion must be exercised on the basis of sound information, soundly viewed. Where the accused seeks to withdraw his plea of guilty before sentencing on the ground that he has a defense to the charge, the District Court should not attempt to decide the merits of the proffered defense, thus determining the guilt or innocence of the

> "defendant. In certain situations, where the issue raised by the motion tangential nature, resolvable apart from the merits of the case, the District Court may appropriately hold a factual hearing to determine whether the accused has a 'fair and just' reason for asking to withdraw his plea of guilty."

In the case of Everett v. United States (1964) 119 U.S. App. D.C. 60 wherein a defendant filed a motion to withdraw a plea of guilty to two counts, but readily admitted his guilt to one of the counts, the Court of Appeals upheld the District Court's ruling, which allowed the defendant to withdraw the plea as to one count but not to the one in which he admitted guilt, but clearly reiterated the lenient philosophy of allowing withdrawal of guilty pleas. In fact, in a dissenting opinion, Judge Wright wrote as follows:

> "The recent ruling (Nagelberg) of the Supreme Court here indicates that the withdrawal of the guilty plea before sentence by one who admits his guilt may be proper. The case before us is a stronger one than the case before the Supreme Court, for here the defendant may change his plea before sentencing, even where he does not challenge the commission of the act charged against him. I would therefore vacate the decision below and remand for consideration in the light of the recent Supreme Court opinion."

The Court of Appeals reiterated its position in the case of Hawk v. United States (1964) 119 U.S. App. D.C. 267 Judge Fahy in a concurring opinion set out clearly

the reasoning behind what has been the Court's position:

> "The question is not answered by the fact the guilty plea was validly entered. The right to withdraw such a plea is not conditioned upon its invalidity. The question is whether, not withstanding its validity when entered, the court should in the exercise of that sound discretion applicable to this problem permit it to be changed. In answering the court should give weight to the place trial by jury is accorded in our system of administering criminal justice. On the background of this fundamental right the courts give generous latitude to an accused who wishes to go to trial rather than to adhere to a plea of guilty previously entered."

The only cases in which the Court has ruled otherwise have been where reliance on the plea has prejudiced the Government's case. This is not shown to be the case here where, in fact, the Government made no rebuttal at al. Clearly the law and the facts of the case at hand entitle the Appellant to his right to a reversal.

Conclusion

For the reasons set out above, the judgment of the Court below should be reversed.

Respectfully submitted,

Robert F. Comstock
Counsel for Appellant
(Appointed by this Court)